

IN THE SUPREME COURT OF MISSISSIPPI
NO. 2014-KA-00188

JEFFREY ALLEN
a/k/a JEFFERY GREY ALLEN

PETITIONER

V.

STATE OF MISSISSIPPI

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

COMES NOW Jeffrey Allen, petitioner, by and through counsel pursuant to MRAP Rule 17 and respectfully requests that the Court issue a Writ of Certiorari for review of the final decision by the Mississippi Court of Appeals (COA) in this case, and in support thereof would most respectfully show:

1. The COA issued a final decision on March 3, 2015, affirming petitioner's Jackson County capital murder conviction. [Appendix I].
2. Allen filed a Petition For Rehearing on March 5, 2015, which was denied by order of the COA entered June 9, 2015. [Appendix II].
3. Allen seeks certiorari review of the COA's rulings under Issues 1 and 2.

**ISSUE NO. 1: WHETHER IT WAS ERROR TO ALLOW HEARSAY
TESTIMONY OF ALLEGED PRIOR BAD ACTS AND
CHARACTER EVIDENCE?**

4. Under Issue Number 1, Allen respectfully requests certiorari review pursuant to MRAP Rule 17(a)(1) on the suggestion that the COA erred by rendering a decision which conflicts with published Supreme Court decisions and also erred by failing to follow

controlling constitutional provisions under the Sixth Amendment to the Constitution of the United States of America and Art. 3 §26 of the Mississippi Constitution of 1890.

5. The COA ruled that the trial court did not err in admitting irrelevant bad character hearsay testimony of nine prosecution witnesses.

6. Allen and his co-defendant, Donna Freeman, were charged with murdering Charlie Mason a junk dealer in Jackson County. Freeman had been Charlie's girlfriend and had continued to mooch off Charlie after she left him and started a relationship with Allen. Allen's defense was that Freeman killed Charlie on her own.

7. The State's evidence against Allen consisted largely of testimony from nine hearsay witnesses - eight of Charlie's friends, family and associates, plus a customer of the junk yard - who testified in varying ways that Charlie disparaged Freeman and Allen and suspected that Freeman and Allen were stealing from him. These witnesses also included references to Charlie's expressed opinions of Allen's character. This testimony was allowed after the trial court overruled Allen's pre-trial motions to exclude it as hearsay and as irrelevant prior bad acts and character evidence under Miss. R. Evid. 404(b). [R. 110-13, 162; RE 22, 28; T. 16- 20, 124].

8. The first of these hearsay-404(b) witnesses was Charlie's son, Ike Mason. Ike testified that he had known Allen a long time and that neither he nor any of Charlie's other 13 children liked Freeman freeloading off of their father [T. 252-53, 257-58].

9. Ike testified about two telephone conversations he had with Charlie, one about

a week before the incident and another on the day Charlie died. [T. 254-57, 331-34]. Ike told the jury that, during the first conversation, Charlie was very upset and accused Freeman and Allen of stealing Charlie's checks. *Id.* Afterwards, Ike said he telephoned Allen and told Allen that Charlie was "shook up" and not to go back out to Charlie's place any more. *Id.*

10. The second hearsay-404(b) witnesses was Allen Tubb, a friend and neighbor of Charlie's who testified that Charlie had told him that Freeman and/or Allen had been stealing things. [T. 259-63].

11. The same day, Tubb said he saw Freeman and Allen getting what looked like "clothes and stuff" out of a travel trailer. [T. 264-67]. Tubb heard Allen say they needed to hurry and leave because Allen was being accused of stealing. It was apparent from his testimony that Tubb knew Allen had been told to stay away from Charlie's place because of the alleged thefts. [T. 267-68].

12. The third hearsay-404(b) witness was David Williams who had just met Charlie the day he was killed when Williams went to the salvage yard to buy parts. [T. 265, 276]. As Williams was gathering parts in the salvage yard, he said Charlie came and talked to him. [T. 277]. According to Williams, Charlie told him, "a guy named Jeffery ... and a friend [were] coming around and stuff, and ... that they're no good, and they [were] wanting money, and he said he wasn't giving them no more money." *Id.* Williams also described seeing Freeman and Allen asking Charlie for money which Charlie said he

would not give them. [T. 277-78, 283].

13. The fourth hearsay-404(b) witness was Kathy Mason, Charlie's ex-wife who had maintained a good relationship after their divorce. [T. 286-88]. She helped Charlie with his bookkeeping for the salvage business. [T. 290].

14. In Kathy's last conversation with Charlie she described Charlie being upset because he and Freeman "had been having trouble and stuff." [T. 291-93]. Kathy said Freeman had been stealing money from Charlie and writing checks on his account, and that Charlie "had trouble" with Freeman and Allen. *Id.* Kathy testified that she had Charlie's bank statements and that Freeman's signature was on Charlie's returned checks, although Freeman did not have authority to sign his checks. *Id.*

15. Charlie reportedly told Kathy that he was not having anything else to do with Freeman. *Id.* He said he was not going to allow Freeman and Allen back on his place any more and that Freeman had gotten her last money from him. [T. 294].

16. The fifth and sixth hearsay-404(b) witnesses were Danyiele Schenk and Mitchel Wright, an unmarried couple, who were close friends with Charlie. [T. 340-41].

17. A few days before his death, Charlie went to their house and spoke to Schenk about borrowing a trailer. [T. 342-44]. During their conversation, Charlie brought up Freeman. [T. 344-45]. He told Schenk he was having a lot of problems with her, particularly, that Freeman had "started running" with Jeffery Allen and that they were "hitting him up for money all the time and stealing things." *Id.* Charlie told Schenk that

he was through with them and cutting Freeman off, not giving her any more money, “since she was with Jeffery.” *Id.* Charlie was very mad and upset and did not like Freeman “hanging with” Allen. *Id.* Charlie told Schenk that Allen “was trouble” and that “he was nothing,” that Charlie “didn’t like him at all” and that Freeman “was crazy to be with him.” *Id.*

18. Wright testified that Charlie “treated him like a son” and that they talked almost every day. [T. 352]. Wright testified that Charlie “didn’t think very much” of Allen. [T. 355]. Charlie thought Allen was “a dope head” and did not like Freeman being with him. *Id.* There was a number of times that there were verbal conflicts between Charlie and Allen. [T. 355-56].

19. Wright told the jury that, when they asked for money, Freeman did the asking but Allen would be around. *Id.* When Charlie returned the borrowed trailer the next day, he told Wright he was through with Freeman and Allen, because of money and stealing, and because “they’re back on the shit.” [T. 357].

20. The seventh hearsay 404(b) witness, Matthew Furby, lived near Charlie and used to work for him. [T. 418-20]. Furby said he was close to Charlie and they “talked every day.” *Id.* Furby testified that Charlie spoke of Freeman and Allen and that Charlie was aggravated because Allen was coming around arguing and that they were not “seeing eye to eye.” [T. 418-20]. Furby attributed this to Charlie’s “jealousy,” but added that Allen and Freeman were also “stealing from” Charlie. [*Id.*, 421-22]. Furby testified that

shortly before Charlie's death, Freeman and Allen were at Charlie's and Freeman distracted Charlie while Allen "took a couple of things." *Id.* Charlie told Furby that he confronted Allen about this and they got into an argument. *Id.* Furby said Allen left and "he wasn't supposed to be back up there at the time." *Id.*

21. The eighth hearsay-404(b) witness was Frank Miller, a close friend of Charlie for 40 years who had worked for Charlie and even lived with Charlie until about two weeks prior to the incident. [T. 450]. Miller said he moved out because "it was trouble in the making, and I didn't want to be around when it happened." *Id.*

22. The "trouble," according to Miller, was between Charlie, Freeman and Allen. [T. 451]. Miller said, Freeman "stole checks and money, and I don't know what all else" and Charlie was trying to get rid of her, and "this fellow right here come along" [referring to Allen] and that "composed another little problem, you know, because [Charlie] and her, they was like boyfriend and girlfriend. I think he wanted them gone, but they still hung around." *Id.*

23. When asked whether Charlie said "he thought that Jeffery Allen was stealing from him?" Furby replied, "I don't think he mentioned that, but he mostly mentioned about Donna. I'm sure he did come out there. Most all of them was out there stealing, you know." [T. 453].

24. The ninth hearsay-404(b) witness was Paula Belk who also lived nearby and had known Charlie for about 50 years. [T. 492]. On the day before Charlie died, Belk

testified she had a conversation with Charlie during which he said that Freeman “had gotten involved with a bad guy, and that he hated it for her, and that they had [recently] been at his house and -- that they had come into his house, and that while he was talking to the guy” Freeman went to the restroom at the back of the trailer” and “they stole checks, money and a gun.” [T. 494-96].

25. The defense objected to the hearsay bad character evidence in a motion in limine which was overruled pretrial. [R. 110-13, 162; RE 22, 28; T. 16- 20, 124].

26. Even after recognizing that Allen’s motion in limine objecting to the bad character evidence being introduced by hearsay was ruled on by the trial court, the COA found that the issue was not preserved for review on the basis that Allen did not renew his objections during trial stating:

[w]e further acknowledge that Allen failed to object to any testimony regarding his specific bad acts. Where a party fails to raise a contemporaneous objection to a witness’s testimony, the party is barred from raising the issue for appellate review. [Citing] *Walker v. State*, 671 So. 2d 581, 597 (Miss. 1995). (Op. ¶ 28).

27. It is respectfully suggested that this ruling is patently in total contrast to the Supreme Court’s ruling in *Goff v. State*, 14 So. 3d 625, 640 (¶ 46) (Miss. 2009). In *Goff* the court held that a party who has lost a pretrial motion to suppress specific evidence is not required to renew objections when that evidence is offered at trial in order to preserve the issue for appellate review. *Id.* (See also, *Kettle v. State*, 641 So. 2d 746, 748 (Miss. 1994)).

28. Secondly, it is respectfully suggested that the COA erred in finding that the trial court did not abuse its discretion in allowing the nine hearsay witnesses to offer irrelevant prejudicial bad character and prior bad act evidence against Allen through hearsay which was a denial of Allen's confrontation rights and rendered Allen's trial unfair. Miss. R. Evid. 404(b); Amend. VI, U. S. Const.; Art. 3 § 26, Miss. Const. (1890); *Duplantis v. State*, 644 So. 2d 1235 (Miss. 1994); *Byrom v. State*, 863 So. 2d 836, 847 (Miss. 2003).

29. The evidence was improper under Miss. R. Evid. 403, 404(b), and 803 and was not part of the res gestae. *Flowers v. State*, 773 So. 2d 309 (Miss. 2000); *Snelson v. State*, 704 So. 2d 452, 455 (Miss. 1997); *Corbin v. State*, 74 So. 3d 333 (Miss. 2011).

30. The COA opinion suggests that the trial judge was very thorough in overruling Allen's motion in limine, but, the record indicates otherwise. The trial court overruled Allen's Motion In Limine Number 1 without expressly weighing the prejudicial effect of the evidence against any probative value stating, "[w]ith respect to the Motion in Limine concerning bad acts, I find under 404(b) under motive, et cetera, it's allowed, and so that Motion in Limine is overruled." [R. 162; RE 28; T. 124].

31. Testimonies about Charlie's repeated allegations that Freeman and Allen were stole money, personal property and checks, were all accusations of crimes and testimonial. *Corbin v. State*, 74 So. 3d 333 (Miss. 2011); *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed. 2d 177 (2004).

**ISSUE NO. 2: WHETHER THE VERDICT OF GUILTY OF CAPITAL
MURDER IS SUPPORTED BY THE WEIGHT OF EVIDENCE
AS OPPOSED TO ACCESSORY AFTER THE FACT?**

32. Under Issue Number 2, Allen respectfully requests certiorari review pursuant to MRAP Rule 17(a)(1) on the suggestion that the COA erred by rendering a decision which conflicts with published Supreme Court decisions in finding that the verdict was supported by the weight of evidence.

33. The State's proof of culpability hinged on the testimony of a jailhouse snitch and an alleged accomplice. Both witnesses' testimonies were incredible, unreasonable, inconsistent and substantially impeached; both witnesses had strong motives to fabricate. Arguably, the weight of the evidence only supported a conviction of Allen for accessory after the fact.

34. A conviction cannot stand on an accomplice's testimony which is unreasonable, self-contradictory, or substantially impeached. *Flanagan v. State*, 605 So. 2d 753, 758 (Miss. 1992); *Mason v. State*, 429 So. 2d 569, 571 (Miss. 1983).

WHEREFORE, PREMISES CONSIDERED, Jeffrey Allen prays that the Supreme Court will issue a Writ of Certiorari, review the decision of Court Of Appeals, and reverse his conviction in this case and remand for a new trial.

Respectfully submitted,

JEFFREY ALLEN, Petitioner

By: /s/ George T. Holmes
George T. Holmes, His Attorney

CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 11th day of June 2015, electronically filed the foregoing Petition For Writ of Certiorari with the Clerk of the Court using the MEC system which issued electronic notification of such filing to Hon. John R. Henry, Jr., and Hon. Jeffrey A. Klingfuss, Assistant Mississippi Attorneys General.

/s/ George T. Holmes _____
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